

(2010) 03 P&H CK 0081

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Lakhi Ram Diwan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 5, 2010

Acts Referred:

- Haryana General Sales Tax Act, 1973 - Section 18

Citation: (2010) 30 VST 419

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Judgement

Ashutosh Mohunta, J.

This judgment shall dispose of G.S.T.R. No. 29 of 1997 as well as G.S.T.R. No. 30 of 1997 to GSTR No. 39 of 1997. The Sales Tax Tribunal, Haryana has referred the following questions of law for adjudication by this honourable court :

- Whether sun baked/dried bricks are not covered by Haryana Government Notification No. S.O. 98/H.A/20/S.18/73, dated May 5, 1973 on which tax at the first stage of sale is leviable?
- Whether the interest levied and charged u/s 25(5) of the Haryana General Sales Tax Act, 1973 is legal?
- Whether or not the appellant is entitled for the rebate of sales tax which he has paid to the sellers of such bricks at the time of purchases?

2. Briefly the facts of the case are that the assessee purchased sunbaked bricks from registered dealers after payment of sales tax, as the bricks were taxable at the first stage of sale. After purchase of the bricks, the assessee burnt them in the kiln and sold them without charging any sales tax from the subsequent purchasers. The assessee claimed deductions u/s 18 of the Haryana General Sales Tax Act, 1973 (for short, "the Act").

3. The Assessing Authority did not allow the claim on the ground that unburnt bricks did not come within the purview of the notification dated May 5, 1973, issued by the Haryana Government. Accordingly the Assessing Authority created additional demand against the applicant and levied tax besides interest and penalty imposed u/s 25(5) and Section 47 of the Act. The assessee filed an application u/s 42 of the Act wherein it was averred that no interest is payable on the additional demand created by the Department. The assessee also claimed that the question of law as framed by him in the application be referred to the High Court. This request was turned down by the Tribunal. It was challenged by the assessee in Sales Tax Case No. 48 of 1987 in which the High Court after framing the questions of law directed the Tribunal to refer the same to the High Court. This is how the reference has been made.

4. As far as question No. 1 is concerned, we are of the considered opinion that unburnt bricks did not come within the purview of the notification dated May 5, 1973, issued by the Haryana Government prescribing levy of tax at the first point in respect of the sale of bricks. We are further of the considered view that sun-baked/dried bricks do not fall within the purview of the notification dated May 5, 1973. Accordingly, question No. 1 is answered against the assessee and in favour of the Revenue.

5. As far as question No. 2 is concerned, the same is decided in favour of the assessee being covered by the judgments passed in [J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another](#), and Frick India Limited v. State of Haryana reported as : [1994] 95 STC 188 (SC).

6. In view of our answer to question No. 1, question No. 3 is answered against the assessee and the same has, in fact, become redundant.

7. The aforesaid eleven references stands disposed of accordingly.